



**UNITED STATES  
DEPARTMENT OF JUSTICE**

**2013 IMPLEMENTATION PROGRESS REPORT  
ON ENVIRONMENTAL JUSTICE**

## TABLE OF CONTENTS

<b>Foreword.....</b>	<b>1</b>
<b>Introduction.....</b>	<b>4</b>
<b>Part One: Interagency Collaboration .....</b>	<b>5</b>
<b>Actively Participating in the Interagency Working Group on Environmental Justice (EJ IWG).....</b>	<b>5</b>
<b>Implementing the Interagency Memorandum on Environmental Justice .....</b>	<b>5</b>
<b>Increasing Communication and Awareness Across Federal Agencies .....</b>	<b>8</b>
<b>Participating in Community and Other Outreach .....</b>	<b>8</b>
<b>Part Two: Environmental Justice Accomplishments .....</b>	<b>10</b>
<b>Civil Rights Issues.....</b>	<b>11</b>
<b>Environmental Issues .....</b>	<b>12</b>
<b>Mediation and Conciliation Assistance.....</b>	<b>27</b>



## U.S. Department of Justice

### Foreword

I am delighted to present the Department of Justice’s 2013 Annual Implementation Progress Report on Environmental Justice. This report details the work and achievements of the Department of Justice in carrying out its Environmental Justice Strategy, Executive Order 12898 – *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, and the 2011 Memorandum of Understanding on Environmental Justice and Executive Order 12898.

This year marks the 20th Anniversary of Executive Order 12898, signed by Former President Bill Clinton on February 11, 1994. This historic policy document required each Federal agency to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental



Signing of Executive Order 12898 Courtesy of William J. Clinton Presidential Library

effects of its programs, policies, and activities on minority populations and low-income populations.” Executive Order 12898 also directed each Federal agency to develop an agency-wide environmental justice strategy. On January 9, 1995, Attorney General Janet Reno signed and issued the “Department of Justice Environmental Justice Strategy” and “Department of Justice Guidance Concerning Environmental Justice,” which captured the Department’s goals and plans to successfully implement Executive Order 12898. During the past twenty years, the Department has taken significant and unprecedented steps to ensure that environmental justice principles inform the way we perform our work and lead to meaningful results in communities.

I will highlight just a few of the Department's recent accomplishments:

- Community outreach is one of the fundamental underpinnings of environmental justice. It allows us to better understand community concerns and affords communities a meaningful opportunity to have input into environmental decision-making that could affect them. The Department's Community Relations Service remains an invaluable resource committed to using its mediation and conciliation expertise to facilitate meaningful participation in environmental decisions by community leaders. Representatives from the Department's Environment and Natural Resources Division, Office of Tribal Justice, and U.S. Attorney's Offices met with communities disproportionately affected by pollution, as well as environmental justice advocates and other stakeholders. In addition, outreach the Department conducted in the context of specific cases has proved to be an effective way for communities to participate in decisions regarding appropriate remedies to resolve violations of law.
- Through its casework the Department continues to achieve results that make a visible difference in disproportionately burdened communities. For example, in fiscal year 2013 the Environment and Natural Resources Division and the U.S. Attorney's Offices successfully prosecuted numerous defendants whose violations posed significant health risks to vulnerable workers and low-income and minority communities; brought cases under the Clean Air Act to eliminate sources of air pollution impacting these communities; negotiated settlements to achieve the cleanup and redevelopment of contaminated properties in blighted and underserved neighborhoods; and successfully pursued lawsuits to help restore or replace injured natural resources, including resources important to Native American communities. In civil actions under the Clean Water Act against cities such as Chattanooga, Tennessee, Jackson, Mississippi, and King County, Washington, the Department has secured judgments that require cities to correct inadequate or deteriorating sewer systems, with an eye toward ensuring that problems in communities most severely impacted by past or ongoing violations are addressed sooner rather than later. This report provides many such examples of how the Department has achieved demonstrably positive outcomes through its litigation and casework.
- Interagency collaboration remains a critical component of successfully addressing the environmental justice issues that communities face. The Department continues to play an active role in the Federal Interagency Working Group on Environmental Justice (EJ IWG), created by Executive Order 12898. The EJ IWG facilitates coordination among Federal agencies to guide, support, and enhance Federal environmental justice and community-based activities. As chair of the Title VI Committee of the EJ IWG, the Department is working to identify opportunities for agencies to work collectively to use Title VI of the Civil Rights Act of 1964 to achieve the goals of Executive Order 12898.

As we take this moment to reflect on the past twenty years, and to honor the tireless efforts and contributions of community leaders, Federal, state, local, and tribal governments, and

others to advance this important work, we realize that there is still more to be done. In 2009, the Department began meeting with some of the same environmental justice leaders who participated in the signing of Executive Order 12898. Unfortunately, even today, low-income, minority, and tribal Americans are often disproportionately burdened with pollution, resulting in disproportionate health problems, greater obstacles to economic growth, and a lower quality of life. Equal access to the decision-making processes that would promote a healthy environment in which to live, learn, and work is still not a reality for all Americans. Therefore, the Department has never been more firm in its resolve to build upon the tremendous work that it, along with others, has done to advance the goals of environmental justice. Our mission continues to be guided by a commitment to provide full protection of the nation's laws to all citizens – regardless of their race, ethnicity, or income status. We have and will continue to play an important role in ensuring that the vision of environmental justice becomes a reality. As we look ahead to the next twenty years, we welcome your input on the Department's environmental justice activities, strategy, and guidance.

A handwritten signature in black ink, appearing to read "Tony West", followed by a long horizontal line.

Tony West  
Associate Attorney General

## **Introduction**

The Department of Justice was one of 17 Federal agencies and White House offices that signed a Memorandum of Understanding on Environmental Justice (MOU) in August 2011. Building upon Executive Order 12898 – the federal government’s first statement of an environmental justice policy – the MOU represents the federal government’s renewed commitment to environmental justice. The MOU promotes interagency collaboration and public access to information about agency work on environmental justice, and specifically required each agency to publish an environmental justice strategy, to provide an opportunity for public input on those strategies, and to produce annual implementation progress reports.

During fiscal year 2013, the Department achieved significant results for the American people as it continued to implement its Environmental Justice Strategy, Executive Order 12898 and the MOU. The sections of this report – the Department’s third annual implementation progress report – briefly highlight the Department’s progress toward the goal of achieving environmental justice in protecting communities from environmental harm. All Americans deserve to live, work, play, and learn in places that have clean air, water, and land. Sadly, even twenty years after Executive Order 12898 was signed, the burdens of pollution still often fall disproportionately on low-income, minority, and Native Americans. Environmental justice means that all Americans are afforded fair treatment and full protection under the nation’s laws, including environmental, civil rights, and health laws. Furthermore, every American should have the opportunity to participate meaningfully in the decision-making processes that affect their ability to have a healthy environment. The Department is deeply committed to ensuring that the goals and principles of environmental justice are part of our mission and appropriately integrated into our work. We continue to achieve meaningful environmental justice results and to work on many fronts to help make environmental justice a reality.

This report is divided into two sections. First, we describe the Department’s continued interagency collaboration on environmental justice issues. Working primarily through the Interagency Working Group on Environmental Justice (EJ IWG), the Department is acting with other agencies to promote a coordinated Federal response on environmental justice issues. Second, we summarize selected accomplishments of the Department to further environmental justice through its own work and litigation docket. The Department continued to focus its efforts on increased community outreach regarding our casework and securing tangible results for affected communities.

## **Part One: Interagency Collaboration**

### **Actively Participating in the Interagency Working Group on Environmental Justice (EJ IWG)**

February 2014 will usher in a significant milestone in the history of the Federal government's commitment to address environmental justice issues – the 20th anniversary of the issuance of Executive Order 12898. Additionally, the EJ IWG created by Executive Order 12898 will celebrate its 20th anniversary. The EJ IWG's creation highlights the importance of Federal agencies working collaboratively to address environmental justice concerns. Chaired by EPA and the White House Council on Environmental Quality (CEQ), the EJ IWG is working to facilitate the active involvement of all Federal agencies in implementing Executive Order 12898 by minimizing and mitigating disproportionate negative impacts on overburdened communities and fostering environmental, public health, and economic benefits for all Americans.

Through its work with the EJ IWG, the Department has and continues to play a leadership role in ensuring that there is a coordinated Federal response to environmental justice issues. Representatives from the Department's Environment and Natural Resources Division (ENRD) and Civil Rights Division (CRT) regularly participate in EJ IWG senior staff-level meetings and identify ways the Department can support and further the EJ IWG's work. Federal agencies have made significant progress towards fulfilling the promise of Executive Order 12898 under the leadership of EPA and CEQ. Starting with a President-level meeting and the first-ever White House Forum on Environmental Justice in 2010, Federal agencies reinvigorated the EJ IWG originally established in 1994. Attorney General Eric Holder attended both meetings and former Assistant Attorneys General Ignacia Moreno (ENRD) and Tom Perez (CRT) joined him at the White House Forum. In addition, in keeping with a commitment to hear from communities, the EJ IWG conducted 18 community listening sessions across the country in 2011-2012, a number of which the Department attended. In 2013, ENRD and the Community Relations Service worked with the EJ IWG in reaching out to the tribal community of the Fort Berthold Indian Reservation in North Dakota to coordinate a listening session that is anticipated to occur in 2014. As discussed in Part Two of this report, the Community Relations Service was significantly engaged in efforts to prepare for the community meeting.

### **Implementing the Interagency Memorandum on Environmental Justice**

In 2011, the Department of Justice joined 16 other Federal agencies and White House offices in signing the MOU. The Department played an important leadership role in the conception and development of the MOU and continues to play an important role in its implementation. In addition to requiring annual reports, the MOU identifies four focus areas for the EJ IWG as agencies implement their environmental justice strategies: (1) implementation of the National Environmental Policy Act (NEPA); (2) implementation of Title VI of the Civil Rights Act of 1964, as amended (Title VI); (3) addressing impacts from climate change; and (4) addressing impacts from commercial transportation and supporting infrastructure (often referred to as "goods movement").

The Department continues to make significant progress in fulfilling its own obligations under the MOU and furthering the efforts of the IWG:

- ***EJ IWG NEPA Committee***

The Department's Environment and Natural Resources Division, through its Natural Resources Section (NRS), actively participates in the NEPA Committee, which is dedicated to cross-agency education and coordination on incorporating environmental justice principles into NEPA decision-making. Since its inception in May 2012, the NEPA Committee has taken numerous steps toward achieving its mission. Initially, it assembled, and then posted on the EJ IWG website, an electronic compendium of publicly-available NEPA and EJ-related documents from almost twenty Federal agencies; key references from this environmental justice and NEPA Agency Resource Compendium are also included on EPA's NEPA Webpage. In addition, the NEPA Committee conducted cross-agency training on existing tools, methods, and agency-specific focal areas. The NEPA Committee holds monthly meetings to discuss environmental justice issues in the NEPA context, and to hear presentations from agencies on different aspects of environmental justice and NEPA.

In addition to these regular monthly meetings, the NEPA Committee has formed two subcommittees, the Education Subcommittee and the Community of Practice Subcommittee. ENRD has taken a leadership role on the Education Subcommittee, with an NRS representative serving as Co-Chair of the Subcommittee. ENRD has also participated regularly in the work of the Community of Practice Subcommittee. The Community of Practice Subcommittee is presently compiling a set of best practices that offer effective approaches to considering environmental justice in NEPA reviews. During this fiscal year, ENRD provided significant input into that document. The Education Subcommittee has conducted a review of existing Federal agency training materials on environmental justice and NEPA, and is using this assessment to develop a national training module on NEPA and environmental justice with the focus on effective EJ analysis in the NEPA process. This National Training Product will be used to train NEPA practitioners throughout the Federal government on best practices for incorporating environmental justice into NEPA decision-making.

Moving forward, the NEPA Committee will continue to advance the goals of environmental justice through increased understanding of challenges and opportunities, articulation of effective best practices, training on general and specific NEPA and environmental justice topics, and other measures. Altogether, these efforts will continue to provide Federal officials, at all levels, with a foundational understanding of NEPA's role in addressing EJ through assessment, consideration of alternatives, avoidance and mitigation during the NEPA review process.

- ***EJ IWG Title VI Committee***

The Title VI Committee, chaired by the Department's Civil Rights Division, acts as a resource to help agencies connect their civil rights enforcement responsibilities with their



efforts to achieve environmental justice. In 2013, the Committee: surveyed agencies to determine the extent to which Title VI complaints have included environmental justice issues; and evaluated the relationship between Title VI and environmental justice. Moving forward, the Committee plans on posting a webpage on the EJ IWG website that articulates the interrelationship between Title VI and environmental justice and will identify opportunities for interagency collaboration. ENRD has participated regularly in the Title VI Committee.

- *Climate Change*

Across the United States and the world, climate change is already affecting communities, livelihoods, and the environment in significant ways. These impacts include an increase in prolonged periods of excessively high temperatures, worsening air quality, heavier downpours, increased flooding, an increase in wildfires, more severe droughts, permafrost thawing, ocean acidification, and sea-level rise – and affect communities, natural resources, ecosystems, economies, and public health across the Nation. These impacts are often most significant for communities that already face economic or health-related challenges. The uneven nature of climate change impacts creates differing levels of vulnerability across countries, communities, and even households, with important implications for adaptive actions. In addition, non-climatic stressors can interact with and exacerbate the impacts of climate stressors. Social and economic factors (e.g., economic status, race, ethnicity, age, gender, and health) can significantly affect people's exposure and sensitivity to climate change, as well as their ability to prepare and recover.

On June 25, 2013, President Obama announced his plan to cut carbon pollution and prepare the United States for the impacts of climate change. The President's Climate Action Plan calls upon Federal agencies to "continue to identify innovative ways to help our most vulnerable communities prepare for and recover from impacts of climate change." This focus on building capacity in low-income, minority and tribal communities for climate adaptation comes from a number of policy mandates from both the White House and individual agency leadership. These include:

- On November 1, 2013, President Obama signed Executive Order 13653, *Preparing the United States for the Impacts of Climate Change*, which called for the Federal government to build on recent progress and pursue new strategies to improve the nation's preparedness and resilience. Executive Order 13653 states that "adaptation measures should focus on helping the most vulnerable people and places reduce their exposure and sensitivity to climate change and improve their capacity to predict, prepare for, and avoid adverse impacts." ENRD represents the Department of Justice on the multi-agency Council on Climate Preparedness and Resilience, which was established under Section 6 of Executive Order 13653.
- In its 2010 Progress Report, the Interagency Climate Change Adaptation Task Force, recommended actions in support of a national climate change adaptation strategy, and set forth among its guiding principles that agencies should "prioritize the vulnerable." The report noted that adaptation plans should

prioritize helping people, places, and infrastructure that are most vulnerable to climate impacts. These plans also should be designed and implemented with meaningful involvement from these same communities. Issues of inequality and environmental justice associated with climate change impacts and adaptation should be addressed.

The Department will support President Obama's Climate Action Plan by reporting, through its annual environmental justice implementation progress reports required by the MOU, actions taken to help overburdened communities prepare for, and recover from, the impacts of climate change.

- ***Annual Reporting***

As required by the MOU, in February 2013, the Department issued its second annual Implementation Progress Report on Environmental Justice. The report details the significant efforts and results achieved by the Department to further the goals of environmental justice during fiscal year 2012.

### **Increasing Communication and Awareness Across Federal Agencies**

The Department also continued to collaborate directly with other Federal agencies to increase the dialogue on and awareness of environmental justice issues. The cross-agency group of career attorneys that ENRD, along with EPA's Office of General Counsel, organized in fiscal year 2011 to discuss legal issues that arise with respect to environmental justice, continued to be an important vehicle to increase communication and awareness. In fiscal year 2013, the group continued to serve as an important forum for open dialogue, continuing education, and informal counseling among the Federal agencies on issues such as the intersection of environmental justice and Title VI.

ENRD and Civil Rights Division attorneys and staff continued to assist other Federal agencies in providing environmental justice training to their staff. For example, in April 2013, representatives from the Department's Civil Rights Division and ENRD's Natural Resources Section, Environmental Defense Section, Environmental Enforcement Section, and Office of the Assistant Attorney General, along with ENRD's Senior Level Environmental Justice Coordinator, participated in a DOE environmental justice training session.

The Department has been committed to improving interagency coordination as a necessary tool for effectively responding to environmental justice concerns. The Civil Rights Division provides guidance and resources to Federal agencies to enhance collaborative efforts in the enforcement of Title VI of the Civil Rights Act of 1964.

### **Participating in Community and Other Outreach**

The Department participates in the Regional IWG Committee (RIWG) established by the EJ IWG. The purpose of the RIWG is to facilitate coordinated regional federal activities that respond to communities at the local and regional level. In 2013, the RIWG Committee finalized

its concept which includes its vision, goals, membership, organization, and key principles. This internal concept is designed to help guide the RIWG in the process of forming regional workgroups (designed around the EPA regional structure) and working with existing workgroups with the goal of better addressing issues, concerns, and recommendations that may result from public engagement at the local and regional levels, and to increase cooperation among Federal agencies in support of Executive Order 12898. The committee's goals, in part, are to help respond to environmental justice issues or concerns in a more timely and unified manner, help build community capacity, and leverage resources of Federal agencies with those at state, tribal and local agencies, as well as individual communities, the private sector and non-governmental organizations (NGOs) to address environmental justice issues. The committee is moving forward with identifying and selecting cross-government collaboration efforts to aid communities.

In addition to supporting the RIWG, in September 2013, the Department and several other Federal agencies from the EJ IWG met with members of the Front Lines Fellows program hosted by the Energy Action Coalition Environmental Justice Collective. The meeting was an opportunity for the Fellows to discuss the environmental justice concerns they are working to address in their communities, and any resources Federal agencies might have to assist them.

The Department will continue to work with the EJ IWG to conduct listening sessions with communities to evaluate, among other things, the effectiveness of agency environmental justice strategies and seek recommendations on how agency efforts can be improved. During these sessions we gain valuable feedback directly from communities that often helps us improve how we integrate environmental justice principles into the work we do. We look forward to continuing our participation in them.

## Part Two: Environmental Justice Accomplishments

The Department's efforts to integrate the principles of environmental justice into its work continue to be led by DOJ's internal Environmental Justice Workgroup, chaired by the Office of the Associate Attorney General. The coordination among and within the relevant DOJ components facilitated by this Workgroup is a fundamental aspect of the Department's successful implementation of Executive Order 12898 and DOJ's Environmental Justice Strategy and Environmental Justice Guidance.

The Department's environmental justice public website ([www.justice.gov/ej](http://www.justice.gov/ej)), launched in September 2011, provides the public access to view and comment on the Department's Environmental Justice Strategy and Environmental Justice Guidance.

Information about DOJ policies, case resolutions, and contact information for the public can be found on the website as well. The Department has also made its prior Annual Implementation Progress Reports available on the website.



The remainder of this section of the Department's fiscal year 2013 report focuses on three areas of the Department's work as it relates to environmental justice: (1) civil rights issues; (2) environmental issues; and (3) mediation and conciliation assistance. The Department has continued to achieve significant results, but there is still more to accomplish in our efforts to promote environmental justice in all that we do. The Department remains committed to ensuring that environmental justice will be a key part of the Department's mission into the future.

## **Civil Rights Issues**

In May 2013, the Assistant Attorney General for Civil Rights issued a memorandum to all federal civil rights directors strongly encouraging them to take advantage of coordination opportunities and to develop procedures to incorporate greater interagency collaboration in their Title VI programs. The AAG noted that many agencies provide assistance to the same or similar types of recipients and therefore are well positioned to engage in formal and informal coordination efforts around a range of Title VI compliance activities, including complaint investigations, pre- and post-award reviews, training and technical assistance. Resources such as agency delegation agreements and memoranda of agreement were posted on the Division's website. Because some environmental justice issues involve recipients of federal funds from multiple agencies, improved interagency collaboration on enforcement and compliance activities is crucial to all agencies' efforts to implement Executive Order 12898.

As in 2011 and 2012, the Civil Rights Division continued to work extensively with the EPA and the Department of Transportation on their Title VI enforcement and compliance efforts. The Division has committed several staff to work with these agencies on complex legal questions involving the application of Title VI and its implementing regulations.

The Division supported the efforts of Federal agencies to provide training and aggressively enforce Title VI. The Division participated in civil rights activities organized by the Department of Transportation and the Environmental Protection Agency, and moderated a discussion of Title VI enforcement by Federal agencies during the National Environmental Justice Conference, sponsored by the Department of Energy.

The Division was actively involved in the Department's review of critical documents drafted in response to Presidential Policy Directive 8 – National Preparedness (PPD-8). PPD-8 is aimed at strengthening security and resilience through systematic preparation for the threats that pose the greatest risk to the security of the country, including catastrophic natural disasters. The Division ensured that numerous documents incorporated protections for minority communities and directed inclusion of these communities in the development of local plans related to emergency preparedness, response, and recovery.

The Civil Rights Division continued to engage stakeholders by holding meetings and attending D.C. area conferences to communicate the Division's Title VI and environmental justice work and to obtain a greater understanding of current issues related to federal enforcement and compliance activities.

In fiscal year 2013, the Civil Rights Division participated in ENRD's regular discussions with federal career attorneys about legal issues that relate to environmental justice matters. Specifically, the Division discussed its authority to ensure consistent enforcement of Title VI and the role civil rights laws play in implementing the Executive Order.

The Division continues to lead the Title VI committee of the EJ IWG. The committee has supported information sharing among members of the EJ IWG on Title VI matters and, guided by the AAG's May 2013 memorandum on interagency coordination, is identifying opportunities for the EJ IWG to engage on specific policies that implicate Title VI and environmental justice.

## **Environmental Issues**

The Department remains committed to the strong enforcement of our nation's environmental and natural resources laws. This work is principally handled by ENRD. The Division was founded in 1909 and is led by Acting Assistant Attorney General Robert G. Dreher. The Division is organized into nine Sections and an Executive Office. It is principally located in Washington, D.C., with offices in Denver, Colorado; Sacramento, California; and San Francisco, California.

ENRD's core mission includes:

- Enforcement of civil and criminal environmental laws to ensure clean air, water, land and other resources for the protection of human health and the environment for all Americans;
- Vigorous defense of environmental, wildlife and natural resources laws and agency actions;
- Effective representation of the United States in matters concerning the stewardship of our public lands and natural resources;
- Vigilant protection of tribal sovereignty, tribal lands and resources, and tribal treaty rights; and
- Protection of the public fisc.

Ensuring that environmental justice is considered in all aspects of our work remains a core mission of ENRD. ENRD strives to ensure that all Americans are protected from environmental harms – regardless of their income status, race, or ethnicity. ENRD continues to work closely with U.S. Attorneys' Offices and in concert with other Federal agencies to ensure that affected communities have a meaningful opportunity for involvement in environmental decision-making that affects them, including the consideration of appropriate remedies for violations of the law. Highlighted below are some of the steps the Department has taken in fiscal year 2013 to make environmental justice a more routine and fully integrated part of its work and that of its client agencies.

### **Conducting Outreach on Environmental Justice Issues**

The Department of Justice, including ENRD, the Office of Tribal Justice, and U.S. Attorneys' Offices, continues to engage in an unprecedented level of community outreach to ensure that the Department understands and is responding to community concerns. This has taken many forms, including community meetings and visits by senior Department officials, participation in EJ IWG listening sessions and community calls, participation in environmental justice conferences, and outreach in conjunction with cases in litigation. ENRD and U.S. Attorneys' Offices have worked with other components in the Department, Federal agency

partners, and community representatives to organize direct outreach. For instance, the following are examples of outreach conducted to tribes:

- Justice Department officials from the Office of Tribal Justice, ENRD, and U.S. Attorneys' Offices have met with representatives of tribes and tribal communities regarding environmental concerns, such as water rights and the effects of industrial activities on tribal lands and values. In fall 2013, Department officials met with tribes in the Columbia River region regarding environmental issues, including the effects of coal transportation on the Columbia River.
- In November 2013, Department leadership and officials from OTJ and ENRD participated in the White House Tribal Nations Conference, which included listening sessions on topics such as climate change, environmental concerns, and protection of sacred sites.
- Attorney General Holder is an active member of the newly-formed White House Native American Affairs Council. The protection of tribal lands and natural resources is one of the four primary missions of the Council and was the topic of discussion during 2013 meetings.

Acting Assistant Attorney General Robert Dreher, former Assistant Attorney General Ignacia Moreno, and other ENRD senior staff also took the opportunity to speak about environmental justice on a number of occasions. Examples include:

- November 28, 2012 videoconference remarks to the Attorney General Advisory Committee Environmental Issues Working Group
- January 15, 2013 Transportation Research Board Annual Meeting panel on Trends in Title VI and Environmental Justice in Environmental Reviews
- February 8, 2013 ALI-ABA panel on NEPA and Environmental Justice
- February 15, 2013 meeting with Environmental Justice Advocates
- May 14, 2013 remarks to Hispanic National Bar Association on Legislative Day
- December 2013 videotaped remarks for Asian Development Bank Conference on U.S. Law, Wildlife Trafficking, and Environmental Justice

ENRD, partnering with EPA, also continued to foster a dialogue with corporate leaders regarding environmental justice. In February 2013, former Assistant Attorney General Ignacia Moreno along with Cynthia Giles, EPA's Assistant Administrator for Enforcement and Compliance Assurance, convened a second session with representatives from the corporate community to discuss environmental justice in enforcement matters. The first session was held in July 2012. Both sessions provided a forum for a fruitful discussion to raise awareness within the corporate community of the importance of environmental justice and encourage

consideration of environmental justice as a basic component of enforcement and compliance matters and corporate-community relations. It is important that the corporate community participate in the conversation on environmental justice. ENRD continues to seek appropriate opportunities to engage business stakeholders in constructive discussions that advance the goals of environmental justice.

### **Training and Increasing Awareness**

ENRD has continued to increase awareness and understanding of environmental justice issues among its attorneys and staff. For example, in 2013, ENRD's Environmental Crimes Section (ECS) incorporated environmental justice training into their annual Environmental Crimes Seminar at the National Advocacy Center in Columbia, South Carolina. The training, attended by ENRD attorneys, EPA attorneys, Fish and Wildlife Service personnel, National Oceanic and Atmospheric Administration personnel, and 40 Assistant U.S. Attorneys from 28 U.S. Attorneys' Offices, focused on identifying environmental justice issues in criminal cases.

The Environmental Crimes Section also provided training specifically for its staff. An October 2012 training session held for attorneys within the Section focused on the history of environmental justice, key components of the Section's environmental justice plan, and the responsibilities of prosecutors within the Section when working on cases with environmental justice implications. The second training session in February 2013 was tailored to paralegals and legal assistants, addressing record keeping and reporting requirements for cases that raise environmental justice issues.

Training is a critical aspect of integrating environmental justice principles into the fabric of the Section's work. ECS has taken further steps to accomplish this. For example, during case management reviews, every open case within the Section was reviewed to assess whether it had environmental justice implications. In addition, the template for ECS's prosecution memorandum was modified to include an "Affected Persons and Communities" section, which requires the prosecutor to assess whether there are individuals and/or communities that have been adversely affected by environmental violations and the impact that has on decision-making.

Throughout the life of a case, it is important to consider environmental justice issues, so ECS regularly coordinates with its primary enforcement partners, such as EPA. For example, the Environmental Crimes Section's EJ Coordinator meets with representatives of EPA's criminal program on a monthly basis to discuss implementation of both the ECS Environmental Justice Plan and the EPA Office of Criminal Enforcement, Forensics and Training EJ Plan. In addition, they consult each other as issues related to environmental justice arise in cases.

ENRD's defensive sections have also continued to ensure that Division staff are imbued with an awareness of environmental justice issues and work to integrate environmental justice principles into the defense of agency actions. For example, to ensure that all employees are familiar with environmental justice principles, the Natural Resources Section has made a commitment to provide annual training on environmental justice. This has been accomplished by providing section-wide training on NEPA and environmental justice at annual Section meetings and by making periodic smaller training opportunities available to staff. The Section-



wide training has included an overview of the Section's environmental justice plan, how to access relevant environmental justice resources, and an in-depth analysis of environmental justice case studies to help identify agency best practices with regard to environmental justice as well as an overview of how courts approach environmental justice issues in litigation. Informal brown-bag sessions provided comparable training to legal interns and recent hires. Similar training activities have been undertaken by the Division's other Sections.

In addition to training, the Department continued to look for other ways to institutionalize its commitment to the principles of environmental justice:

- Developed in fiscal year 2012 and approved by ENRD management in fiscal year 2013, each of ENRD's nine Sections has implemented a Section-specific plan for integrating environmental justice considerations into their day-to-day work. The plans are currently undergoing review and will be updated, as necessary, based on the experience the Sections have gained from putting those plans into action.
- DOJ established an Indian Civil Litigation and Policy Working Group, co-chaired by Office of Tribal Justice (OTJ) Director Tracy Toulou, ENRD Deputy Assistant Attorney General Ethan Shenkman, and U.S. Attorney for the District of South Dakota Brendon Johnson. As part of its monthly meetings, if the issues and cases reviewed also raise environmental justice concerns, they are discussed across the relevant DOJ components.

Continuing the Department's efforts to facilitate environmental enforcement in Indian Country, on March 27, 2013, the Crow and Northern Cheyenne environmental enforcement offices received training from EPA's Criminal Investigation Division and the District of Montana U.S. Attorney's Office on environmental and wildlife crimes. The meeting covered the legal and jurisdictional nuances of crimes occurring in Indian Country, provided an overview of environmental crimes, and gave tips on several investigatory techniques. The meeting generated a lot of favorable feedback, with the participants looking forward to collaborating on several important initiatives.

### **Integrating Environmental Justice Principles into ENRD Litigation and Outcomes**

Through enforcement of the nation's environmental and natural resources laws, ENRD's Environmental Enforcement and Environmental Crimes Sections and the U.S. Attorneys' Offices seek to ensure that all communities enjoy the benefit of a fair and even-handed application of the law, and have a meaningful opportunity for input in the consideration of appropriate remedies for violations of the law.

The Department's commitment to environmental justice continues to be demonstrated in its litigation results. For example, the following cases concluded by ENRD and the U.S. Attorney's Offices, in coordination with our agency partners, in fiscal year 2013 have furthered the principles or goals of environmental justice:

- Helping to restore the important relationship between the environment and Mohawk culture, society and economy was a significant facet of the settlement in *United States, State of New*

*York and St. Regis Mohawk Tribe v. Alcoa Inc. and Reynolds Metals Co.* (N.D. N.Y.), a case brought under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to recover damages for injuries to natural resources. The Natural Resource Trustees – the Saint Regis Mohawk Tribe, Department of the Interior (U.S. Fish and Wildlife Service), National Oceanic and Atmospheric Administration (NOAA), and State of New York – determined that hazardous substances were released for decades by three industries: two aluminum producers, Alcoa Inc. (Alcoa West) and Reynolds Metals Inc. (now Alcoa East), and the former General Motors (GM) Central Foundry plant located adjacent to the Saint Regis Mohawk Tribe Reservation in Massena, New York. These hazardous substances adversely impacted natural resources within the surrounding environment and contaminated the Mohawk community of Akwesasne, degrading natural resources used for traditional cultural practices.

The \$18.5 million from this settlement was combined with \$1.8 million in restoration funds from the 2011 GM bankruptcy settlement to provide about \$20.3 million for restoring injured natural and cultural resources, and lost human uses of natural resources, such as recreational fishing. From this amount, the Tribe will receive about \$8.4 million to support traditional cultural practices, including an apprenticeship program to promote Mohawk language and traditional teachings. A portion of the funds will also support cultural institutions including youth outdoor education programs and horticultural programs for medicine, healing, and nutrition. More than \$10 million from the GM and Alcoa settlements will be spent on ecological restoration projects, including restoration or enhancement of wetlands, streambanks, native grasslands, bird nesting and roosting habitat, fish habitat and fish passage, and acquisition of unique habitat under threat of development.

These projects may also benefit cultural practices that depend on these restored natural resources. Finally, Alcoa will spend approximately \$2 million to develop and upgrade two boat launches on the Raquette River



Bank of the Raquette River

NOAA/Department of Commerce Photo

and construct three new launches on the Grasse River to improve fishing and boating access to rivers in the Massena area.

- *In the Matter of: Former Lawrence Metals Site* was a CERCLA settlement, in which ENRD facilitated EPA's entering into an agreement with a private developer and a municipal Economic Development Board that will result in the cleanup and redevelopment of a contaminated site in a former commercial and industrial area of Chelsea, Massachusetts. The property is located in a community with environmental justice concerns and is part of a larger revitalization project in that community. Pursuant to the agreement, the developer will contribute \$1.65 million toward cleaning up the site. ENRD and EPA worked closely with the City of Chelsea to resolve this matter in a way that benefitted the community and enabled contaminated and blighted property to be put back to productive use.
- In *United States & State of Tennessee v. City of Chattanooga* (E.D. Tenn.), to resolve Clean Water Act violations, the City of Chattanooga agreed to pay a civil penalty and make improvements to its sewer systems, including eliminating unauthorized overflows of untreated raw sewage, estimated by the City to cost approximately \$250 million. Approximately 60% of these sanitary sewer overflows (SSOs) occur in areas with large lower-income or minority populations. Chattanooga was able to prioritize the vast majority of its proposed early action injunctive relief to these areas.



Sanitary sewer overflow

In addition, Chattanooga agreed to perform a stream restoration supplemental environmental project (SEP) at a cost of \$800,000 in an area identified by EPA as having environmental justice concerns. The SEP will restore the stream and stabilize the banks of a tributary of the South Chickamauga Creek and eliminate a significant source of sediment and solids to the creek. Pursuant to the settlement, Chattanooga will also perform green infrastructure demonstration projects in the historic downtown Highland Park neighborhood (another area where EPA identified environmental justice concerns) to, among other things, improve water quality in the Dobbs Branch stream, which flows into Chattanooga Creek.

Prior to finalizing the terms of the settlement, Chattanooga, along with EPA and the Tennessee Department of Environment and Conservation (TDEC), conducted a public outreach campaign. Chattanooga held two public meetings on different evenings in different parts of the city. Chattanooga advertised the public meetings in its monthly newsletter *Common Ground* published by Chattanooga's Department of Neighborhood Services and Community Development. Chattanooga notified community and environmental justice leaders in the area of these meetings from a list jointly prepared by Chattanooga, Tennessee Clean Water Network, TDEC, and EPA. Both meetings were well attended, and the Mayor of Chattanooga attended and participated in the first meeting.

- The settlement approved by the court in *United States and the State of Mississippi v. City of Jackson, Mississippi* (D. Miss.), resolved violations of the Clean Water Act in connection with the City's wastewater treatment system and sanitary sewer overflows. During the

negotiations, the United States and State worked together to compile a list of contacts in the local community who had been involved in environmental justice matters and conducted outreach to those individuals regarding the potential remedies to address the violations. Based in part on feedback from the community, as part of the settlement the City will prioritize injunctive relief at its Savannah Street Treatment plant as well as certain areas with environmental justice concerns that had historically experienced a large number of sewer overflows. In addition, as a supplemental environmental project the City will spend approximately \$875,000 to fix defective or leaking private laterals (the connection from a home to the City's sewer system) in low-income communities served by the City's sewer system.

- The settlement approved by the court in *United States and State of South Carolina v. Town of Timmonsville, South Carolina* (D. S.C.), will help provide needed relief to the residents of Timmonsville, South Carolina. Timmonsville is a small town in Florence County, South Carolina, with a predominately minority and low-income population. Although Timmonsville was supposed to provide water and sewer service for approximately 2,500 residential, commercial and industrial entities in the surrounding area, the Town was chronically out of compliance with the Safe Drinking Water Act and the Clean Water Act. The Town's utilities were in a deplorable state of repair and the Town was unable to take steps necessary to bring its utilities into compliance. The condition of Timmonsville's utilities posed a significant risk to public health. As part of the settlement, the nearby City of Florence agreed to assume control of Timmonsville's sewer and drinking water utilities and to perform work necessary to bring the utilities into compliance with the Safe Drinking Water Act and Clean Water Act. Due to Timmonsville's poor financial condition, a civil penalty was not imposed.
- The Fort Belknap Indian Community ("FBIC") and the Prairie Mountains Utility ("Utility") own and operate six public water systems within the boundaries of the Fort Belknap Indian Reservation ("Reservation"). The Utility, a tribally owned entity, is responsible for providing solid waste disposal, drinking water, and wastewater treatment services to communities located within the Reservation boundaries. The Reservation, located 40 miles south of the Canadian border in eastern Montana, has high unemployment rates and is a low-income community. The settlement approved by the court in *United States v. Fort Belknap Indian Community and Prairie Mountain Utilities* (D. Mont.), resolves numerous Safe Drinking Water Act violations by the FBIC and the Utility that posed serious risks to human health. The settlement requires FBIC and the Utility to make structural changes to their respective organizations to minimize systemic management failures that have been at the root of many of the Safe Drinking Water Act violations. In addition, there are system-specific requirements in the settlement for repair and optimization of the various drinking water systems.
- In *United States and State of Wisconsin v. Northern States Power Company* (W.D. Wis.), a settlement approved by the court will result in a partial cleanup and a natural resource damages (NRD) recovery at the Ashland/Northern States Power Lakefront Superfund Site in Northwestern Wisconsin. The site sits on the shores of Chequamegon Bay in Lake Superior and was home to a number of manufacturing businesses during the 20th century, including a manufactured gas plant. Contaminants from the on-land portion of the site migrated into the

Bay and damaged high quality feeding, spawning, and nursery habitat for fish, including walleye, smelt, sturgeon, and multiple species of trout and salmon. The Bad River and Red Cliff Indian reservations are located on either side of the City of Ashland and abut Chequamegon Bay or other portions of Lake Superior. Both Tribes have traditionally fished in Lake Superior and inland streams and rivers.

Under the settlement, Northern States Power, a successor to the owner of the manufactured gas plant, agreed to perform the on-land portion of the site cleanup and transfer land to the Natural Resource Trustees to redress natural resource injuries at the site. In reaching the settlement, DOJ led negotiations for the Trustees, including the State of Wisconsin and the Bad River and Red Cliff Indian Tribes. DOJ worked with the Tribes to determine what elements of a natural resource damages recovery would be most beneficial to them. The Tribes identified lands within Reservation boundaries along water bodies feeding the Bay that were owned by outside entities. Transferring those lands to the Tribes is expected to improve management of the rivers and improve habitat for the trust resources, while also fulfilling the independent Tribal goal of gaining ownership of land within Reservation boundaries. Once the preferred relief was identified by the Tribes, DOJ negotiated a final settlement that requires Northern States Power to transfer 400 acres within the Bad River Reservation to the Bad River Tribe. This includes an area known as the “Falls,” a series of ledges in the Bad River that provide important spawning areas. The settlement also calls for the Wisconsin Department of Natural Resources to transfer 114 acres within the Red Cliff Reservation to the Red Cliff Tribe.

- In *United States v. Geneva Energy, LLC* (N.D. Ill.), the court approved a settlement resolving, on an ability to pay basis, claims against Geneva Energy, for numerous Clean Air Act violations resulting from its ownership and operation of a tire-burning electric generating facility near Chicago, Illinois. Geneva Energy will pay no civil penalty, but, among other things, was required to permanently shut down the facility, which has been mostly idle since August 2011. The settlement also resolved allegations of Clean Air Act violations described in a notice of violation/finding of violation issued by EPA to NAES, Inc., which operated the facility for a limited time. Under the settlement, NAES will pay \$185,000 to resolve its alleged liability.

The City of Ford Heights, where the facility was located, has one of the lowest per capita incomes in the United States, an over 95% minority population, extensive urban blight, and several industries which employ few local residents. As revealed at the environmental justice community outreach session ENRD and EPA held for this matter in 2010, the facility was well-known for its Clean Air Act violations. In 2006 and 2010, citizen groups filed with EPA two separate complaints under Title VI of the Civil Rights Act of 1964 against Illinois EPA related to that agency’s issuance of the facility’s air permits. Complainants argued that the facility’s operations had a disproportionately adverse effect on the Ford Heights community and the permit terms were too lenient. The terms of the settlement (particularly requiring the facility’s permanent shut down) will assist in addressing those Title VI complaints. Prior to the court’s approval of the settlement, ENRD sent letters to all the participants in the 2010 community outreach session.

- In *United States, State of Illinois, and State of Ohio v. Gateway Energy & Coke Company, LLC, Haverhill Coke Company, LLC, and Suncoke Energy, Inc.* (S.D. Ill.), ENRD reached a settlement that resolves Clean Air Act claims relating to two Midwestern coking facilities, one of which (the “Gateway Facility”) is located in Granite City, Illinois, close to St. Louis. According to an analysis of census data performed by EPA, Granite City is an environmental justice area of concern. The settlement requires the defendants, among other things, to perform a lead abatement hazard reduction SEP in residences in the area surrounding the Gateway Facility. The SEP will entail abating lead hazards in owner-occupied residences whose occupants are unable to afford such lead abatement work, with priority given to families with young children or pregnant women. The SEP must be completed within two years of entry of the settlement. The settlement also requires Gateway Energy to install \$100 million in equipment that will route hot coking gases to a pollution control device, install a continuous emissions monitor for sulfur dioxide and bypass vents, and pay a \$1.995 million civil penalty.
- In *In re the matter of Carter Carburetor Site, St. Louis, Missouri*, ENRD approved an EPA administrative settlement under CERCLA requiring ACF Industries, LLC to perform the majority of a \$26.5 million removal action for the Carter Carburetor Site in North St. Louis, Missouri. The site is a former gasoline and diesel carburetor manufacturing plant that operated from 1915 to 1984. The 10-acre complex of buildings and structures is located within a predominately minority and low-income community where investigators have found unacceptable levels of polychlorinated biphenyls, trichloroethylene and asbestos. The contaminated site, which is also within close proximity to several schools, a ball park and directly across the street from a Boys and Girls Club, has an increased risk of human exposure to these toxins. Due to the site’s proximity to these facilities and its location in a predominately lower-income and minority community, environmental justice concerns were identified and EPA conducted community outreach. ENRD worked to quickly approve the settlement so that this important cleanup work could proceed.
- In *United States and the State of Washington v. King County, Washington* (W.D. Wash.), the court approved a Clean Water Act settlement requiring King County to: (1) construct and implement a series of storage tanks or pipes and treatment facilities, as set forth in its approved Long Term Control Plan (LTCP), (2) develop and implement a system-wide operation program to maximize the treatment and storage of wet weather flow, and (3) develop and implement a joint plan with the City of Seattle that optimizes the capacity of both entities’ sewer systems and coordinates the operations of future combined sewer overflow (CSO) projects. This injunctive relief is aimed at controlling the County’s ongoing sewer overflows from its wastewater treatment and collection system and improving water quality in Puget Sound, Elliott Bay, Lake Washington, the Duwamish River, and other waterbodies in the Seattle area used by local communities with environmental justice concerns. Specifically, the Puyallup, Tulalip, Suquamish, Muckleshoot and Duwamish Tribes have fishing rights and interests in Puget Sound, Lake Washington, the Duwamish River, and local waterbodies that are impacted by the County’s discharges of raw sewage. The Duwamish River, an impaired waterbody receiving large volumes of raw sewage from the County’s CSOs, is a source of subsistence fishing for low-income residents of the area, as well as recent immigrant populations. The County has been and will continue to coordinate



with and seek feedback from these same entities as it implements its LTCP pursuant to its Public Participation Plan. In addition, the County has agreed to arrange its construction schedule so that the CSO control projects along the Duwamish River will be prioritized for completion so as to benefit the Tribes and communities with environmental justice concerns by reducing the CSO discharges into the River where they fish and live. Following implementation of its LTCP, the County will have captured 94% of its CSO discharges during storm events and reduced overflows from each of the County's permitted CSO outfalls to no more than one overflow per year. The estimated cost of the injunctive relief is \$860 million (in 2010 dollars).

- In *United States v. Connie Knight* (E.D. La.), the United States alleged that, in the wake of the 2010 Deepwater Horizon oil spill in the Gulf of Mexico, Connie Knight victimized vulnerable communities by impersonating a high-ranking Occupational Safety and Health Administration (OSHA) instructor and inspector to defraud unsuspecting victims. Using false federal credentials, she persuaded community members, most of whom were from the Southeast Asian fishing community, that she could provide them training to handle hazardous materials. Instead, Knight produced false training certificates and phony CPR/first aid certification cards. During the late summer of 2010, most shrimp fishing along the Louisiana coast was closed due to the oil spill. Members of the Southeast Asian community who were dependent upon shrimping for their income were desperate for alternate sources of income. Many were not fluent in written or spoken English. Knight saw this opportunity and came up with her scheme. She charged each of her victims, but failed to provide them the training they would need to obtain employment. The false certifications also potentially put her victims and the public at risk. After being indicted, Knight pleaded guilty to three felony counts and one misdemeanor count of creating false identification documents and impersonating a federal official. She was sentenced on May 16, 2013, to 57 months incarceration, and to pay her victims restitution in the amount of \$25,300. The case was prosecuted by ENRD and the U.S. Attorney's Office for the Eastern District of Louisiana.



Cleanup workers on shore Barataria Bay, LA

NOAA Photo

- In *United States v. Citgo Petroleum Corporation* (S.D. Tex.), CITGO Petroleum Corporation (CITGO Petroleum) and CITGO Refining and Chemicals Company (CITGO Refining) operated two open top tanks, each the size of a football field and filled with oily wastewater, without installing the proper emission controls. The tanks were used as oil-water separators, but were not equipped to prevent the emissions of chemicals into the air. The companies knew years before the two tanks went into operation that the tanks were required to have emission control equipment. During an unannounced inspection in March 2002, environmental inspectors found approximately 4.5 million gallons of oil in the two open top tanks exposed to the atmosphere. The refinery is surrounded by two residential communities with significant minority populations. These communities were exposed to benzene and other emissions from the plant over a number of years. Adult and child residents complained about odor and acute adverse health effects such as difficulty breathing, coughing, sore throat and eye irritation. On June 27, 2007, a jury convicted CITGO Petroleum and CITGO Refining of two Clean Air Act violations. CITGO Refining also was convicted of violating the Migratory Bird Treaty Act. Since that time, ENRD has engaged in outreach to members of the affected community, which included three community meetings/listening sessions to learn about how members of the community had been affected by Citgo's illegal benzene emissions and to prepare to address the Court at sentencing. After the district court refused to recognize any of the members of the community as victims of CITGO's conduct, the victims through pro bono counsel petitioned for and obtained a writ of mandamus from the Fifth Circuit Court of Appeals. Since then, ENRD has presented 90 victims to testify to the district court about the acute health effects, injuries, and financial impacts they suffered as a consequence of CITGO's criminal conduct. CITGO Petroleum and CITGO Refining were each sentenced to pay \$1 million for their violations of the Clean Air Act. CITGO Refining was ordered to pay an additional \$45,000 for the Migratory Bird Treaty Act conviction. The Court has not yet ruled on victim restitution.
- The settlement resolving Clean Water Act and Safe Drinking Water Act violations in *United States v. Frank Perano, et al.* (E.D. Pa.) will benefit thousands of residents at 73 mobile home park communities by requiring park owners to conduct audits and take corrective measures with respect to water treatment, collection, and drinking water systems. The park owners also agreed to pay a \$1,339,000 civil penalty. The U.S. Attorney's Office for the Eastern District of Pennsylvania, EPA and the Commonwealth of Pennsylvania, Department of Environmental Protection, handled the case. The case demonstrates the government's commitment to seek environmental justice for rural communities.
- In *United States v. Procino et al.* (D. De.), Patrick Procino pled guilty to one count of illegal storage of hazardous waste without a permit, in violation of the Resource Conservation and Recovery Act. As the owner/operator of Procino Plating, Inc., he also entered a guilty plea on behalf of the corporation to one count of violating the Clean Water Act. Procino illegally stored approximately 450 gallons of liquid hazardous waste that had been used at the plating facility and had a pH of 0.8, which made it a "corrosive waste" under the Resource Conservation and Recovery Act. The plating company processed chemicals leftover from its electroplating operations and, in violation of its Clean Water Act permit, discharged the resulting wastewater to a treatment plant that discharged into the Nanticoke River. Both



defendants are currently awaiting sentencing. Procino Plating operated in an area of environmental justice concern. This case, handled by the U.S. Attorney's Office for the District of Delaware, demonstrates the government's commitment to protecting such communities from improper storage and disposal of hazardous wastes and industrial pollutants.

- In *United States v. Jonathan Shokrian and Califco, LLC* (N.D. Tex.), the defendants pled guilty to violating the Clean Air Act in connection with the improper removal of asbestos during the demolition of a vacant retail space. Jonathan Shokrian, a Califco officer, had just completed an expensive asbestos abatement at another Califco property in Texas and tried to save money and time by hiring two undocumented workers to remove asbestos-containing floor tile and mastic. The defendants' conduct exposed the workers to dangerous levels of asbestos and other toxic substances. The workers, who used electric grinders and massive amounts of gasoline to remove the materials, were not informed of the presence of asbestos, and were not provided with the proper equipment to complete a lawful abatement. The workers were instructed to dispose of the asbestos containing material in outdoor open-top dumpsters which were later transported to a landfill not authorized to receive asbestos-containing material. Although the defendants are currently awaiting sentencing, defendant Califco has already agreed in plea papers to pay a \$500,000 fine.
- In *United States v. Skunkcap Jr. et al* (D. Mont.), three former Blackfeet tribal leaders pled guilty to the illegal sale of wildlife and theft from a tribal government receiving federal funding for holding illegal big-game hunts for country musicians participating in an outdoors television show on a northwestern Montana reservation. The defendants admitted to holding four hunts between 2010 and 2011 without obtaining the limited and expensive hunting licenses for non-tribal members to shoot elk, moose, deer and a black bear. The three men also admitted to using tribal funds and personnel to outfit and guide the musicians, television show hosts, and a fly fishing expert. There are only five to ten hunting licenses for each big-game species available to non-tribal members each year, with each license costing between \$1,500 and \$12,000 depending on the animal. The defendants are awaiting sentencing.
- In *United States v. Fromdahl, et al.* (D. Mont.), the U.S. Attorney's Office for the District of Montana prosecuted Matthew Black Eagle and Robert Fromdahl for the transportation of hazardous waste to an unpermitted facility and the storage of hazardous waste without a permit. A Montana rancher reported to his local sheriff's office that he found approximately 45 drums containing unknown substances on land he was leasing from the Fort Peck Indian Reservation tribal government. A hazardous materials (HAZMAT) team responded to the site and found numerous 55-gallon drums, some of which were marked, "sulphuric acid," "caustic potash," and "caustic soda beads." The team took three samples from the drums which were tested and determined to have a pH of less than 2, making them highly corrosive. Black Eagle was aware that the drums contained hazardous waste and willingly allowed Fromdahl to leave the drums on his property in exchange for payment. Both defendants were sentenced to probation, community service hours, and ordered to pay over \$50,000 in restitution.

- In *United States v. Steven Patrick Garcia, Jr.* (D. Mont.), Steven Garcia was sentenced to two years in prison for illegally trafficking in the feathers and body parts of eagles, hawks, and other migratory birds. Garcia, who was living in Lame Deer at the time, set up a MySpace page where he displayed seventy photographs of various migratory bird parts. In this way, Garcia offered for sale, and sold, mostly unworked tail feathers of bald eagles, golden eagles, ferruginous hawks, rough-legged hawks, and northern flickers that had been killed on and around the Northern Cheyenne Reservation.

In fiscal year 2013, ENRD's Indian Resources Section also handled other environmental matters that benefitted Indian tribes. For example:

- ENRD intervened in litigation brought by the Penobscot Nation in Maine, *Penobscot Nation v. Mills* (D. Me.). The controversy concerns whether the Nation's reservation includes the Main Stem of the Penobscot River. The Reservation consists in large part of a number of islands located in the Main Stem, a portion of the Penobscot River beginning north of Bangor at Indian Island with other islands ranging north of that. The State of Maine indicated in 2012 that it believed the Nation has no jurisdictional authority over the waters of the Penobscot River and suggested that if the Nation disagreed, the matter be resolved in the appropriate forum. The Nation filed a lawsuit to protect the right of tribal members to exercise sustenance fishing rights in the River and to protect its authority to regulate the taking of wildlife and game on those portions of the River falling within its reservation. A holding that the Main Stem falls within the Reservation means that Penobscot Nation members may engage in sustenance fishing in the Main Stem free of state regulation and that the Nation may regulate hunting, trapping, and the taking of wildlife (water fowl) in the Main Stem.
- ENRD filed a motion for summary judgment in *Smith v. Parker* (D. Neb.), a case that concerns the reservation boundaries of the Omaha Tribe of Nebraska. The issue in the litigation is whether an 1882 act of Congress diminished the Tribe's reservation boundaries, or simply offered non-Indians the opportunity to purchase land within the Reservation. ENRD filed an amicus brief when the case was pending in tribal court, and in its summary judgment motion in federal district court again took the position that the act did not result in diminishment. EPA has long taken the position that the area in dispute remains within the Reservation boundaries, but permits it has issued have been challenged. EPA has indicated its intention to issue other permits, but those permits can be issued only if the facility is determined to be located within a reservation or otherwise within Indian country. A favorable determination will affirm the ability of EPA to issue needed permits and ensure protection of the environment on Reservation lands.

More than half of ENRD's work consists of defending the environmental or natural resources actions of Federal agencies. The Division has worked to incorporate the principles of environmental justice into our handling of these cases as well. ENRD works closely with agencies to identify defensive cases that present environmental justice concerns, even where the complaint may not clearly assert a specific claim that the agency failed to address environmental justice issues adequately. More broadly, in the context of litigation, the Division actively evaluates the depth of the agency's analysis and handling of environmental justice issues as well

as the completeness of the decision-making effort in addressing environmental justice concerns. Indeed, rather than merely defending agency analysis of environmental justice issues and decision-making, ENRD implements the environmental justice Executive Order by proactively looking for ways to address concerns of environmental justice communities outside of the traditional litigation context. Two recent examples of this aspect of ENRD's environmental justice effort are described below:

- In *Honolulu Traffic.com v. Federal Transit Admin* (D. Haw.), ENRD worked successfully with City and County of Honolulu transportation agencies to successfully defend a major rail transit project linking western O`ahu with downtown Honolulu. In addition to easing severe traffic congestion and alleviating air pollution, the project will provide significant transit benefits to minority and disadvantaged communities in western O`ahu. The Division is currently defending the agencies' compliance with the district court's limited remand order.



High Capacity Transit Corridor Project Honolulu, Hawaii FTA Diagram  
(November 2012)

- In *Crenshaw Subway Coalition v. Los Angeles County Metropolitan Transportation Authority*; *515/555 Flower Associates, LLC v. Federal Transit Administration* ("FTA"); *Today's IV, Inc. v. FTA*; *Japanese Village LLC v. FTA*; *Beverly Hills Unified School District v. FTA*; and *The City of Beverly Hills v. FTA* (C.D. Cal.), ENRD is collaborating intensively with the Los Angeles County Metropolitan Transportation Authority (LACMTA) to defend challenges to three public rail transit projects to expand the public transit rail network in Los Angeles County. The projects will greatly expand light rail transit into the minority and low-income Crenshaw community in south Los Angeles while providing easier access to Los Angeles International Airport, and decreasing traffic congestion in and around communities throughout the Los Angeles basin.

### *Climate Change*

In fulfilling its core mission, ENRD continues to further Federal agency efforts to address impacts from climate change:

- Over the past several years, EPA has developed a regulatory program under the Clean Air Act to regulate greenhouse gas emissions that contribute to global climate change. In 2012,

the Division obtained a groundbreaking victory in *Coalition for Responsible Regulation v. EPA*, a large, consolidated Clean Air Act case in which the D.C. Circuit upheld EPA's principal regulations setting greenhouse gas emission standards for motor vehicles and phasing-in greenhouse gas permit requirements for stationary sources. In July 2013, in *Utility Air Regulatory Group v. EPA*, the Division obtained another favorable decision from the D.C. Circuit dismissing challenges to follow-up EPA actions to facilitate permitting for major stationary sources of greenhouse gas emissions, such as power plants, in 13 states whose state implementation plans did not already provide authority to address greenhouse gas emissions in preconstruction permits for major sources. In October 2013, following extensive briefing by the Solicitor General's Office (in conjunction with ENRD), the United States Supreme Court denied the lion's share of nine separate petitions for certiorari seeking further review of the D.C. Circuit's 2012 decision in *Coalition for Responsible Regulation*. The Supreme Court did agree to consider a single issue pertaining to stationary source greenhouse gas permit requirements, which will be argued in February 2014.

- During fiscal year 2013, the Division reached a landmark company-wide settlement with Safeway, the nation's second largest grocery store chain. The measures to which Safeway has committed are expected to prevent the release of more than 100,000 pounds of refrigerants that destroy the ozone layer. In *United States v. Safeway, Inc.* (N.D. Cal.), the company agreed to significantly reduce emissions of ozone-depleting substances from refrigeration equipment at its 659 stores nationwide, at an estimated cost of approximately \$4.1 million. The settlement resolved allegations that Safeway violated the Clean Air Act by failing to promptly repair leaks of HCFC-22, a hydro-chlorofluorocarbon used as a coolant in refrigerators. HCFC-22 is both a greenhouse gas and an ozone-depleting substance. As a greenhouse gas, HCFC-22 is up to 1,800 times more potent than carbon dioxide. The settlement also resolves allegations that Safeway failed to keep adequate records of the servicing of its refrigeration equipment. Safeway will implement a corporate-wide refrigerant compliance-management system to comply with stratospheric ozone regulations. The company will reduce its corporate-wide average leak rate from 25% in 2012 to 18% or below in 2015. It also will reduce the aggregate refrigerant emissions at its highest-emission stores by 10% each year for three years. Safeway also agreed to pay a \$600,000 civil penalty.



Toboggan Glacier, Alaska June 29, 1909 by Sidney Paige Toboggan Glacier, Alaska Sept. 4, 2000 by Bruce F. Molnia  
Source: Glacier Photograph Collection, National Snow and Ice Data Center/World Data Center for Glaciology. NASA

## **Mediation and Conciliation Assistance**

The Community Relations Service (CRS) is the Department's "peacemaker" for community conflicts and tensions arising from differences of race, color, and national origin. Created by the Civil Rights Act of 1964, CRS is a specialized Federal mediation and conciliation service available to community leaders and organizations and state and local officials to help resolve and prevent community tension associated with allegations of discrimination on the basis of race, color, or national origin. CRS also works with communities to employ strategies to prevent and respond to alleged violent hate crimes committed on the basis of actual or perceived race, color, national origin, gender, gender identity, sexual orientation, religion or disability. Through mediation, conciliation, technical assistance, and training, CRS offers services that can enable community members to participate meaningfully in environmental decision-making that may affect them. The following is an example of these services provided during the last fiscal year:

The Three Affiliated Tribes (TAT) of the Fort Berthold Indian Reservation are located on top of the Bakken Oil Formation in North Dakota. CRS travelled to Bismarck and New Town, North Dakota and partnered with representatives from the EJ IWG, more specifically with personnel from EPA Region 8's Environmental Justice Program, and met with identified community stakeholders, officials, and other representatives from Fort Berthold Indian Reservation and Fort Berthold Community College. CRS also met with representatives from the United Tribal Technical College (UTTC), the Executive Director of North Dakota Indian Affairs, the United States Attorney for the District of North Dakota and other federal and state agency representatives to coordinate plans regarding a September public dialogue.

CRS' services were requested to help community members identify immediate issues and concerns surrounding the challenges of oil-related growth and hydraulic fracturing ("fracking") that was taking place on the Bakken Formation, an area which encompasses the entire Fort Berthold Indian Reservation. CRS contacted the Fort Berthold Tribal College to identify participants in a CRS led dialogue process and determine their role, and contacted traditional and grass roots community groups to identify their issues and concerns.

On August 13-14, 2013, CRS and EPA met with the Commissioner for the North Dakota Indian Affairs Commission, officials from the UTTC, the TAT Chief of Police, the U.S. Attorney and officials from the U.S. Attorney's Office for North Dakota, the TAT Environmental Protection Director and Coordinator, and other community leaders for a CRS led dialogue process. During the dialogue session, there were serious concerns raised by many participants surrounding the increased risks and challenges for communities regarding roads, citizen safety and harm to the environment. Some community members believed that their concerns were not being addressed and that they were not being included in meetings to voice their concerns surrounding present and future decisions related to tribal lands and resources. Community members requested that information be shared and concerns be addressed on a more regular basis. The public meetings were well-received and useful to the community. The North Dakota

Indian Affairs Commissioner, the U.S. Attorney for North Dakota, and the Section Chief for the North Dakota Department of Health were all supportive of and wished to participate in the planned September public meetings, which have now been postponed until 2014. CRS followed up with community members and members from Fort Berthold Community College regarding the postponement and the status of another community meeting tentatively scheduled for 2014.



Drill rig in Bakken oil field Stark County, ND

U.S. Geological Survey/ photo by Stephanie Gaswirth